

Claim in Progress Exclusion Coverage Update

August 1, 2023

Claim in Progress Exclusion – Sixth Circuit (Ohio/Indiana Law)

James River Cas. Co. v. UniControl, Inc.

No. 22-3721, 2023 WL 4543487 (6th Cir. July 14, 2023)

The U.S. Court of Appeals for the Sixth Circuit affirmed the decision of the district court that found a policy's exclusion for claims in progress precluded coverage for a claim relating to damages caused by alleged environmental contamination.

UniControl, Inc. (UniControl) owned a piece of property in Michigan City, Indiana at which UniControl's predecessors in interest operated a manufacturing facility. In February 2020, the city of Michigan City and the Michigan City Redevelopment Commission (city) commenced a lawsuit against UniControl and its predecessors, alleging that the former facility, which operated from 1918 to 1971, caused environmental contamination to the surrounding area. The city attempted to remediate the contamination beginning in 2010, but it was still present in February 2020.

UniControl sought coverage from James River Insurance Company (James River), which had issued five commercial general liability policies to UniControl from 2015 to 2020 (James River policies). James River denied UniControl's request, citing an exclusion in each James River policy for "property damage ... which begins or takes place before the inception date of coverage," whether or not the property damage was known to the insured. James River commenced a declaratory judgment action against UniControl in January 2021, seeking a declaration that it had no duty to defend or indemnify UniControl for the city's claims.

The district court granted James River's motion for summary judgment and denied UniControl's cross-motion, holding that the claim in progress exclusion unambiguously precluded coverage for the city's claims because the contamination in question had begun long before the inception of the first James River Policy. The district court specifically rejected UniControl's argument that James River, nevertheless, had a duty to defend the city's lawsuit, because the exclusion also applied to James River's potential defense obligations. UniControl appealed the decision.

On appeal, the appellate court upheld the district court's decision, finding that the claim in progress exclusion was unambiguous and precluded coverage for property damage that began before the policy period. In so holding, the appellate court rejected UniControl's argument that the exclusion did not apply to property damage actively occurring during the policy period, noting that the exclusion

CLAIM IN PROGRESS EXCLUSION COVERAGE UPDATE Cont.

specifically applies to any property damage that “begins” before the policy period, even if it continues during that period. “Because ‘reasonably intelligent policyholders could not legitimately disagree as to what the policy language means,’” the appellate court held, “we deem the term unambiguous and apply its plain ordinary meaning.” The appellate court also rejected UniControl’s argument that James River, nonetheless, had a duty to defend it, noting that the insuring agreement states that James River has no duty to defend any suit to which the insurance policy did not apply. The appellate court concluded that “[a]ny limitation on coverage within subsection (a) therefore extends to the duty to defend along with the duty to indemnify.”